

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 72724

BWoods LLC
500 E. Pratt Street
Suite 200
Baltimore MD 21202

1963 Brady Avenue

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on April 14, 2010 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 410; Baltimore County Code (BCC) section 32-3-102; 500.9; 32-3-102; Zoning Commissioner's Policy Manual (ZCPM), failure to remove all trucks and trailers from commercial property known as 1963 Brady Avenue, 21227.

On March 15, 2010, pursuant to § 3-6-205, Baltimore County Code, Inspector Chip Raynor issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$10,000.00 (ten thousand dollars).

The Respondent failed to request a Code Enforcement Hearing and/or failed to appear after requesting a Hearing. Baltimore County Code, § 3-6-205(d) provides that in case of failure to request a Code Enforcement Hearing or if the violator (Respondent) fails to appear after requesting a Hearing then the citation and the civil penalty, shall be the Final Order of the Code Official not subject to appeal.

The following persons appeared for the Hearing and testified: Vicky Starin, Jeremy Weeks, Complainants and Chip Raynor, Baltimore County Code Enforcement officer.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. A Correction Notice was issued on February 4, 2010 for illegal Class II Trucking Facility, violation of commercial site plan and/or zoning order, violation of development plan/site plan, and requesting "must remove all trucks and trailers from property." This Citation was issued on March 15, 2010.

B. Inspector Chip Raynor testified that prior code enforcement cases and court cases were brought on this property against a prior owner. Review of the file shows that the property was sold to the current owner, BWoods LLC, on November 2, 2007. Inspector Raynor testified that on May 11, 2007, the Baltimore County Zoning Commissioner issued an order granting a use permit for this property with numerous specific restrictions. He further testified that this Citation was issued because the current owner's use of the property is violating some of those restrictions. He testified that his inspection found multiple large tractor-trailers parked on the property, constituting a Class II Trucking Facility that is not permitted in an MH-IM zone and is not allowed by the use permit that has been issued for this property. He further testified that a second tenant renting the rear of the property is operating an automobile repossession business and improperly bringing in multiple vehicles.

C. Inspector Jeff Radcliffe testified that he handled inspections of this property from 2003 to 2007 and that multiple enforcement actions were taken because of violations. He testified that part of the area is zoned DR 5.5 and you have to come through that part to get to the MH zone. He further testified that the prior owners were fined pretty heavily and had to cease operation of a storage and trucking business.

D. Complainant Vicky Starin lives at 1961 Brady Avenue. She testified that the prior tenant had used the property improperly for trucks and trash trucks, and that the neighbors had to show up for multiple hearings because of operations in the middle of the night and because bright lights were being used. She testified that the manager of the repossession company has been polite and complied with

her request to redirect a bright floodlight that was disturbing her. She further testified that car carriers have been coming up the road in the middle of the night and that 18-wheelers are frequently coming to the property even though they don't fit in the narrow road of Brady Avenue. She complained that the tenants are violating the restriction barring operations from 1 AM to 5 AM.

E. Complainant Jeremy Weeks lives at 1953 Brady Avenue. He testified that he cannot get a night's sleep because of the constant traffic of huge vehicles that shake the house. He testified that huge vehicles including car carriers regularly arrive at 2:30 AM and 4:00 AM. He further testified that the owner has not followed the restriction requiring that the property be watered to reduce dust.

F.1. Zoning Commissioner William J. Wiseman, III considered the property owner's Petition and issued the following order:

"IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 11th day of May, 2007, that the Petition for Special Hearing to determine the classification of the proposed use of the subject property and confirmation under Section 253.1.B.3 of the B.C.Z.R. that ***off-road construction equipment is allowed in an M.L. zone by right and that auxiliary sales and repairs of construction machinery are allowed pursuant to B.C.Z.R. Section 253.1.C.17 in an I.M. district;*** and to allow a durable and dustless parking surface consisting of a recycled aggregate base course as an alternative paving material for storing "off-road" construction equipment in an M.L.-I.M. zone be and is hereby GRANTED. IT IS FURTHER ORDERED that ***request for Use Permit authorization to store, repair and sell construction machinery under Section 500.4 of the B.C.Z.R., in accordance with Petitioner's Exhibit(s) 2A and 2B, be and is hereby GRANTED,*** subject to the following restrictions:

1. The durable and dustless surface will be required to keep dust stabilized during dry weather periods. In the event the area dries due to the absence of rainfall for a period of 20 days, the site shall be watered with a water truck.
2. Additional evergreen landscaping shall supplement existing landscaping....
3. There shall be no use of high-intensity or intrusive lighting (other than low-intensity security types) on the western portion of Lot 59.
- 4. Between the hours of 1:00 AM and 5:00 AM, absent and [sic] emergency, there shall be no activity allowed including no coming or going of lowboy trucks or other vehicles in excess of 50,000 lbs. gross vehicle weight.**
5. Appropriate sanitation facilities shall be made available on the premises for all employees.
6. Development and use of the subject property shall comply with all environmental regulations as set forth in the Zoning Advisory Committee (ZAC) comments submitted by Department of Environmental Protection and Resource Management (DEPRM), dated April 12, 2007, a copy of which is attached hereto and made a part hereof.
7. Other than general maintenance of construction equipment, there shall be no sandblasting, painting or cannibalization of disabled vehicles and no dumping or waste disposal permitted on any portion of the Petitioner's property.
- 8. If any use other than approved by this Order or as shown on Petitioner's Exhibits 2A and 2B is proposed, specifically on any of the parking and storage areas of the subject property, Petitioner shall be required to seek approval by filing a Petition for Special Hearing to amend the Plan/Plat approved as Petitioner's Exhibits 2A and 2B.**
- 9. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order."**

F.2. Petitioner's Exhibit 2B shows the existing and proposed use of the property as "Contractor Equipment Storage Yard" and includes a copy of a 2006 letter from Zoning Review/PDM outlining the permissible uses in an M.L. zone and stating in part, "Repair of equipment owned or leased by others is not permitted on site nor is repair of equipment purchased for resale." Referring to a list of proposed equipment, the letter states, 'shipping containers' are not permitted in site... 'Tractor' means farm type tractors and not tractors for tractor-trailers."

G. The evidence shows that uses are being made of this property that are not permitted by the Use Permit that was granted in 2007. Photographs in the file show several large commercial tractor-trailers parked on the property. Two neighbors testified at this Hearing that large tractor-trailers, often called 18-wheelers, are regularly coming and going from the property. Neighbors also testified that trucks regularly come and go at all hours of the day and night, including between 1:00 AM and 5:00 AM. They also testified that a second business has been installed on the rear of the property, an automobile repossession business. As discussed in detail below, the property owner has improperly violated the restrictions on the existing Use permit, and has violated County zoning regulations. The Zoning Commissioner's 2007 Order specifically requires that if any other use is proposed, a Petition for Special Hearing shall be required to amend the approved Plan/Plat, and that when applying for any permits the site plan filed must reference the Zoning case and set forth and address the restrictions of the Order.

H.1. The Use Permit granted in 2007, following the property owner's Petition for a Special Hearing, authorized storage and auxiliary sales and repairs of construction machinery. No construction machinery is visible in the photographs in the file. The evidence shows that part of the property is instead improperly being used as a Class II Trucking Facility as defined in BCZR Section 101.1 (TRUCKING FACILITY; TRUCKING FACILITY, CLASS II) (truck yard, the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers or truck tractors). This property is zoned M.L. (Manufacturing, Light). In the M.L. zone, a Class II Trucking Facility can be operated only by special exception granted by the Zoning Commissioner. BCZR Section 253.2; see BCZR Section 410A. The property owners have not obtained this special exception permit. The use of the property for a Class II Trucking Facility is therefore unlawful, and this Citation will be enforced.

H.2. The Hearing Officer notes that this is not a new issue for this property. Review of the file shows that Circuit Court Judge Levitz entered a Consent Order on March 28, 2006 ordering that as of March 27, 2006, "neither the owner nor any agents, assigns, contractors or employees will operate or allow the operation of a Class II trucking facilities, as defined in the Baltimore County Zoning Regulations ... at 1963 Brady Avenue, except as subsequently permitted by BCZR upon prior application and approval pursuant to BCZR."

I. The Use Permit granted in 2007 contained nine specific restrictions including a bar on activity between the hours of 1:00 AM and 5:00 AM. The evidence shows this restriction is being violated by the owners and/or tenants of the property, and this Citation will therefore be enforced.

J. The Use Permit granted in 2007 allows use of the property for storage and auxiliary sales and repairs of construction machinery. The evidence shows that an additional business has been added to the property, involving storage of repossessed vehicles. This is not a use permitted as of right in an M.L. zone, and this use was not approved by the Zoning Commissioner in the 2007 use permit. This Citation will therefore be enforced.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$10,000.00 (ten thousand dollars).

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty, as authorized above, shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 21st day of April 2010

Signed: ORIGINALLY SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer